pelled against his will to become a tenant-in-common out of possession. There seems, therefore, to be no escape from the doctrine of *Wetherbee* v. *Green*. Whether the actual result reached in the principal case is a correct one may still be doubtful. At a ratio of six to one the scales nearly balance.

DONATIO MORTIS CAUSA. — In the case of *Liebe* v. *Battman*, 54 Pac. Rep. 179, the Supreme Court of Oregon had occasion to apply to exceptional, as well as notorious facts the rule that a *donatio mortis causa* requires delivery. It appeared that one about to commit suicide indorsed a promissory note, sealed it in an envelope directed to a friend with whom he was living, and placed the envelope, together with a letter to the same friend, upon a table beside his bed. Then he shot himself. The friend came quickly from his room in an opposite part of the house, but the dying man, without further reference to the gift, soon passed into a comatose state from which he never rallied. It was held there had been no delivery in spite of the fact that the friend had picked up the envelope before the donor died, though after he became unconscious. The Court said, "There must be a parting with the dominion over the subject-matter of the gift with a present design that the title shall pass out of the donor and to the donee." The definition and the application of it seemed sound. Placing the addressed envelope on the table where it was directly at the hand of the donor could not amount to a giving up of dominion, and though possibly there was a change of possession before the death that was not enough. A transfer, a positive act of giving, a parting with dominion, — these require a corresponding intent which the unconscious man could not have had. *Leonard* v. *Administrators of Kebler*, 50 Ohio St. 444.

The facts suggest another case far more difficult, — where the document is mailed by the man about to die, but he becomes unconscious before it is actually received. There, with full intent, he has actually set in motion the machinery which was to complete the gift, has done all in his power, and has put the document beyond recall, actually outside of his own dominion. The technical requisite, possession in the donee, alone is lacking. The cases of gifts *inter vivos* where a delivery to A for B is held a good delivery to B are clearly in point, but it must be remembered that these decisions are not harmonious and that the courts might be loath to apply the relaxation of the law *inter vivos* to the *donatio*. The caution that led the Roman law to require five witnesses to perfect a gift in fear of death still lingers in our law and causes not only suspicion and strict scrutiny, but occasionally, at least, a tendency to cramp the rights of the donee.

THE USE OF ADJECTIVES IN TRADEMARKS. — An interesting phase of trademark law, so important in the present state of business competition, was presented last August to the Court of Chancery of New Jersey in *Levi* v. *Schoenthal*, 41 Atl. Rep. 105. The complainant owned a laundry styled, "Incomparable Laundry," and sought to enjoin his former employé from using the same adjective in advertising a rival business of precisely similar nature. A preliminary injunction was refused because of the complainant's laches; but the court, without committing itself, indicated clearly its line of thought on the point of

trademarks. To grant an injunction on this ground, it says, would be to do the great injustice of allowing one, who has asserted the excellence of his product, to exclude all his business rivals from using the same terms with equal truth; in short, it would be a prohibition of the use of the English language.

This view is certainly commendable. To acquire a right in a term as a trademark, it must be significant of the origin of the goods to which it is attached, and designed with the purpose of distinguishing them from articles of a like manufacture. These qualities coupled with priority of appropriation give a right to its exclusive use. *Columbia Mill Co.* v. *Alcorn*, 150 U. S. 460. The adjective in the principal case, which at best is only indicative of class or grade, is the property of all mankind, not subject to individual monopoly. A close analogy may be drawn from the use of geographical names which have never been regarded as subjects of private pre-emption. *Eastman Photographic Materials Co.* v. *Compt. Gen. of Patents, etc.*, 79 L. T. Rep. 195.

In some cases of trademarks suggestive of locality we find equity taking jurisdiction. It is not, however, on the ground of protecting any right in the label, though that may be the practical result. There is a sharp distinction between cases where a geographical name has been claimed as a trademark, and where it has, through long continued application to a certain class of goods, become a standard of superior excellence. In the latter case equity will restrain one living at a different place from fraudulently using such brand to the detriment of him whose business has gained peculiarly the public confidence. *Pillsbury-Washbourne Flour Mills Co.* v. *Eagle*, 86 Fed. Rep. 608. Here the jurisdiction of equity is based on a tort in the nature of fraud, closely analogous to the common law action of deceit, with this distinction, — the complainant is protected, not because he has been deprived of something which was his, but because what would otherwise have fallen into his pocket has been diverted by the defendant. The damage, too, is continuous and difficult of computation. The object being to suppress unfair competition without unduly restraining trade, wide discretionary control is necessarily vested in the courts. This power, however, could not be strained to the extent of prohibiting, where no fraud appears, the use of a familiar adjective, indicative of quality, which could be used truthfully by innumerable business competitors.

Federal Jurisdiction over Corporations. — Shareholders in a company, on being incorporated in two different States, become members of two distinct corporations. Failure to follow this principle led to a doubtful decision in the recent case of *Taylor* v. *Ill. Cent. R. R. Co.*, 89 Fed. Rep. 119 (Cir. Ct. Ky.). A Kentucky statute provided that foreign corporations could not do business within the State without first going through certain formalities of incorporation and thereby becoming domestic corporations, "citizens of Kentucky." The defendant, then an Illinois corporation, complied with this statute. For negligence in the course of its business in Kentucky it was sued in a Kentucky court by a citizen of that State, and obtained a removal to the federal court. This removal has now been upheld on the ground that, for the purposes of this action, the corporation was still, roughly speaking, a citizen of the State of Illinois.